



## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

#### **18 CFR Part 35**

**[Docket No. RM16-3-000]**

### **Ownership Information in Market-Based Rate Filings**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to clarify the scope of ownership information that sellers seeking to obtain or retain market-based rate authority must provide. The Commission proposes to find that the current policy that requires sellers to provide comprehensive ownership information is not necessary for the Commission's assessment of horizontal or vertical market power. The Commission further proposes to amend its regulations to clarify the types of ownership changes that must be reported to the Commission via a notice of change in status.

**DATES:** Comments are due **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through <http://www.ferc.gov>. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

- Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

# NOTICE OF PROPOSED RULEMAKING

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## NOTICE OF PROPOSED RULEMAKING

(December 17, 2015)

1. In this Notice of Proposed Rulemaking (NOPR), the Commission proposes to amend its regulations to clarify the scope of ownership information that sellers seeking to obtain or retain market-based rate authority must provide.<sup>1</sup> The Commission proposes to find that the current policy that requires sellers to provide comprehensive ownership information is not necessary for the Commission's assessment of horizontal or vertical market power. The Commission further proposes to amend its regulations to clarify the types of ownership changes that must be reported to the Commission via a notice of change in status.

### **I. Background**

2. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power. In Order No. 697, the Commission stated that “[t]he first step for a seller seeking market-based rate authority is to file an application to show that it and its affiliates do not have, or have adequately mitigated, market power.”<sup>2</sup> In Order No. 697, the Commission

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<sup>1</sup>All references in this NOPR to “seller” (or “sellers”) refer to both applicants seeking to obtain market-based rate authority and to sellers seeking to retain market-based rate authority.

<sup>2</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 290, *clarified*, 121 FERC ¶ 61,260 (2007) (Clarifying Order), *order on reh'g*, Order

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adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen, each of which serves as a cross check on the other to determine whether sellers may have market power and should be further examined.<sup>3</sup> With respect to the vertical market power analysis, in cases where a public utility or any of its affiliates owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file or that the seller or its applicable affiliate has received waiver of the OATT requirement or qualifies for the blanket OATT waiver provided by Order No. 807,<sup>4</sup> before granting a seller market-based rate authorization.<sup>5</sup> The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical

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No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

<sup>3</sup> *Id.*, FERC Stats. & Regs. ¶ 31,252 at PP 62-63.

<sup>4</sup> *Open Access and Priority Rights on Interconnection Customer's Interconnection Facilities*, Order No. 807, 80 FR 17,654 (Apr. 1, 2015), FERC Stats. & Regs. ¶ 31,367 (2015).

<sup>5</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408. *See also Kingfisher Wind, LLC*, 151 FERC ¶ 61,276, at PP 26-27 (2015) (providing guidance on how

qualified sellers can claim blanket OATT waiver under Order No. 807 and demonstrate lack of vertical market power).

market power analysis.<sup>6</sup> As such, the Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies.<sup>7</sup> In addition, a seller is required to make an affirmative statement that it and its affiliates have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.<sup>8</sup>

3. On rehearing, in Order No. 697-A, the Commission set forth a requirement that a seller seeking to obtain or retain market-based rate authority must identify all of its upstream owners as well as describe the business activity of its owners and whether they are involved in the energy industry. Specifically, footnote 258 of Order No. 697-A states:

A seller seeking market-based rate authority must provide information regarding its affiliates and its corporate structure or upstream ownership. To the extent that a seller's owners are themselves owned by others, the seller seeking to obtain or retain market-based rate authority must identify those upstream owners. Sellers must trace upstream ownership until all

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<sup>6</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 440-451.

<sup>7</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at 447; 18 CFR 35.37(e) (2015). The Commission previously had also required sellers to describe sites for generation capacity, but eliminated this requirement in Order No. 816. *See Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 80 FR 67,056 (Oct. 30, 2015), 153 FERC ¶ 61,065, at PP 212, 368 (2015) (Order No. 816).

<sup>8</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 447-448.

upstream owners are identified. Sellers must also identify all affiliates. Finally, an entity seeking market-based rate authority must describe the business activities of its owners, stating whether they are in any way involved in the energy industry.<sup>9</sup>

4. However, as discussed below, after seven years of experience in implementing the requirements of footnote 258, we believe that the associated burdens on the industry of providing this information may outweigh the benefits of this information for purposes of assessing whether a seller should be granted market-based rate authorization.<sup>10</sup> As part of that assessment, the Commission requires the submission of an asset appendix containing the generation and transmission assets of the seller and its affiliates.<sup>11</sup> Further, in Order No. 816, the Commission instituted a requirement for the submission of a corporate organizational chart depicting all affiliates, as defined in section 35.36(a)(9) of the Commission's regulations.<sup>12</sup>

5. In conjunction with the new organizational chart requirement in Order No. 816, we propose in this NOPR to provide a new complementary framework under which sellers can describe their ownership structure, as described more fully below. Consistent

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<sup>9</sup> Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at n.258.

<sup>10</sup> Market-based rate filings include initial market-based rate applications, notices of change in status and triennial updated market power analyses.

<sup>11</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 895; 18 CFR 35.37(a)(2) (2015).

<sup>12</sup> Order No. 816, 153 FERC ¶ 61,065 at P 333 (to be codified at 18 CFR 35.37(a)(2) (2015)).

with this new framework, we also propose to clarify when a change in ownership would trigger the requirement in section 35.42 to file a notice of change in status.

## **II. Proposed Reform**

### **A. Ownership Information Required in Initial Applications and Triennial Updated Market Power Analyses**

6. Following the issuance of Order No. 697-A in 2008, corporate families, structures, and ownership in the energy industry have become increasingly complex. Through the Commission's implementation of the requirements of footnote 258, it has become clear that the upstream ownership structure of sellers is often layered with numerous levels and types of ownership interests (e.g., full and partial, passive and controlling, etc.). In many instances, sellers initially do not fully comply with the requirements of footnote 258 in their market-based rate filings. Many sellers have difficulty obtaining the names of all owners, particularly those that own a small percentage of the seller or are a partial owner of a partial indirect owner. As a result, in response to requests by Commission staff for the information required by footnote 258, some sellers submit multiple amendments to their filings, resulting in extra expenditures for the seller and significant processing delays for information that does not directly affect the analysis of the seller's market power.

7. Sellers have frequently alleged that it is very difficult to identify and describe individual shareholders, particularly those with less than ten percent voting interests,



because they do not know and cannot obtain this information themselves.<sup>13</sup> In such circumstances, strict adherence to the requirements of footnote 258 could require rejection of filings on procedural grounds irrespective of any market power concerns.<sup>14</sup>

8. As noted above, a seller seeking market-based rate authority must show that it and its affiliates do not have, or have adequately mitigated, horizontal market power. Further, the Commission's review of a seller's ability to exercise vertical market power, whether through ownership of transmission facilities or other barriers to entry, involves examining the seller and its affiliates.<sup>15</sup> However, because information about owners that are not considered affiliates under section 35.36(a)(9) is not necessary to evaluate horizontal and/or vertical market power (and is not required to be identified in the asset appendix or the corporate organizational chart), continuing to require information on unaffiliated owners may create a burden that is unrelated to the Commission's approach to determining whether a seller should have market-based-rate authority.<sup>16</sup>

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<sup>13</sup> See, e.g., 2014 ESA Project Company, LLC, Amended Filing at 2, Docket No. ER15-1496-001 (filed June 4, 2015) (“Shareholders are not required to notify, or obtain consent from, [Applicant’s managing organization] when shareholders transfer their shares or the associate beneficial interests or voting rights”).

<sup>14</sup> See 18 CFR 35.5 (2015) (providing for rejection of rate filing for failure to comply with the applicable requirements).

<sup>15</sup> See 18 CFR 35.37 (2015).

<sup>16</sup> We note that the Commission recently issued a NOPR seeking comment on a proposal to require each regional transmission organization and independent system operator to electronically deliver to the Commission data from market participants that lists market participants’ “connected entities,” including entities that have certain

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9. Accordingly, we propose to amend section 35.37(a)(2) of the Commission's regulations to provide a new framework under which sellers would be required to describe their ownership structure that is both less burdensome for the industry and more useful to the Commission for purposes of whether a seller should have market-based-rate authority. Under this new framework, we propose to revise section 35.37(a)(2) of the Commission's regulations to define an affiliate owner as an owner that meets the definition of affiliate provided in 18 CFR 35.36(a)(9).<sup>17</sup> We propose to require that a seller seeking to obtain or retain market-based rate authority identify and describe

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ownership, employment, debt or contractual relationships to the market participant, and describes the nature of such relationships. *See Collection of Connected Entity Data from Regional Transmission Organizations and Independent System Operators*, Docket No. RM15-23-000, 80 FR 58,382 (Sept. 29, 2015), FERC Stats. & Regs. ¶ 32,711 (2015) (cross-referenced at 152 FERC ¶ 61,219 (2015)). We recognize that some of the ownership information that is proposed herein to be no longer necessary for determining whether to grant market-based rate authority would be required under the connected entities NOPR for the purposes described in that proceeding.

<sup>17</sup> As specified in the Commission's current regulations, "affiliate" of a specified company means: (i) Any person that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company; (ii) Any company 10 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company; (iii) Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate; and (iv) Any person that is under common control with the specified company. For purposes of paragraph (a)(9) of the Commission's regulations, owning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control. 18 CFR 35.36(a)(9) (2015).

two categories of upstream owners. First, a seller must identify and describe the furthest upstream affiliate owner(s) in its ownership chain, which we propose to define as the seller's "ultimate affiliate owner(s)."<sup>18</sup> Second, a seller must identify and describe all affiliate owners that have a franchised service area or market-based rate authority, or that directly own or control: generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies.<sup>19</sup> To the extent that an affiliate owner does not fall into either of the two categories described above, the seller will not need to identify it when describing its ownership structure.

10. Identifying the ultimate affiliate owner is necessary for the Commission to form a meaningful picture of a seller's ownership structure and to understand what affiliates ultimately have the power to influence a seller's operations. The seller should also describe each ultimate affiliate owner's connection to the seller, and this description should be sufficient to allow the Commission to understand the relation between the seller and the ultimate affiliate owner(s), and could include references to the required

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<sup>18</sup> A seller may have more than one ultimate affiliate owner. For example, if a seller is owned 50 percent by affiliate A and 50 percent by affiliate B, there are two ownership "chains" or "branches." The seller must identify and describe the ultimate affiliate owner at the top of each chain/branch, i.e., the last affiliate owner in that chain/branch.

<sup>19</sup> To the extent sellers will be describing such affiliate owners in the horizontal and vertical market power sections of the filing, that description will fulfill this requirement.

corporate organizational chart. Identifying affiliate owners that have a franchised service area or market-based rate authority, or that directly own or control: generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies assists the Commission in its analysis of a seller's horizontal and vertical market power.

11. In addition, where sellers are directly or indirectly owned or controlled by a foreign government or any political subdivision of a foreign government or any corporation which is owned in whole or in part by such entity, we propose to require that the seller identify such foreign government, political subdivision, or corporation.

12. We caution sellers to examine all ownership information to ensure that the required affiliate owners are identified. Sellers should not assume that owners are not affiliates of the seller without looking to the top of the ownership chain. For example, suppose seller (Company A) has four owners (Companies B, C, D, and E) each of which directly owns eight percent of the voting securities of A. If Company F owns 100 percent of the voting securities of Companies B, C, D, and E, under the Commission's affiliate definition, Company F indirectly owns 32 percent of the voting securities of Company A and is an affiliate of Company A. Under our proposed new framework, sellers must identify Company F only if Company F is an ultimate affiliate owner or if it is an affiliate owner that has a franchised service area or market-based rate authority, or that directly owns or controls: generation; transmission; intrastate natural gas transportation, storage

or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies.<sup>20</sup>

13. With respect to owners that a seller represents to be passive, we propose to require that the seller affirm that its passive owners own a separate class of securities, have limited consent rights, do not exercise day-to-day control over the company, and cannot remove the manager without cause.<sup>21</sup>

14. We seek comments on these proposals.

**B. Ownership Information Required in Change in Status Filings**

15. The Commission requires market-based rate sellers to timely report any change in status that would “reflect a departure from the characteristics that the Commission relied upon in granting market-based rate authority.” Section 35.42 of the Commission’s regulations, 18 CFR 35.42, which provides a non-exhaustive list of events that could trigger the change in status reporting requirement, is silent as to generic ownership changes, but requires that a seller must report certain new affiliations with any entity not

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<sup>20</sup> We further caution sellers to be mindful that the Commission does not allow for a derivative share method to calculate ownership interests in downstream, partially-owned entities for purposes of identifying affiliates. *See Tonopah Solar Energy, LLC*, 151 FERC ¶ 61,203, at PP 11-12 (2015).

<sup>21</sup> *See, e.g., AES Creative Resources, L.P.*, 129 FERC ¶ 61,239 (2009) (*AES Creative*) (distinguishing between controlling interests and passive investment interests). *See also EquiPower Resources Management, LLC*, Docket No. ER10-1089-000 (June 16, 2010) (deficiency letter asking seller to demonstrate that certain interests were passive by providing answers to clarifying questions).

disclosed in the application for market-based rate authority that has a franchised service area, or that directly owns or controls: generation facilities; transmission facilities; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies. However, a literal reading of footnote 258 requires sellers to report changes in upstream ownership via notices of change in status filings.<sup>22</sup>

16. We believe that uncertainty as to the interpretation of footnote 258 has led to inconsistent reporting of changes in ownership. In our experience, some sellers report any change in ownership, other sellers only report changes in ownership when the new owner would be considered an affiliate pursuant to section 35.36(a)(9), and yet other sellers only report changes in ownership when the change in ownership causes a change in one of the triggering events explicitly listed in section 35.42. Accordingly, we propose to resolve the uncertainty and create a consistent reporting standard by amending section 35.42 of the Commission's regulations<sup>23</sup> to specify the types of ownership changes that would require a change in status filing.

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<sup>22</sup> Footnote 258 provides: "To the extent that a seller's owners are themselves owned by others, the seller seeking to obtain or *retain* market-based rate authority must identify those upstream owners." See Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at n.258 (emphasis added).

<sup>23</sup> In Order No. 816, the Commission amended, among other things, sections 35.37 and 35.42 of its regulations. The further proposed regulatory text changes in this NOPR are keyed off of the new regulatory text as promulgated in Order No. 816.

17. In light of our proposal to require sellers to identify and describe in their initial applications and triennial updated market power analyses their ultimate affiliate owners, and all affiliate owners that have franchised service areas or market-based rate authority or that directly own or control: generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies it follows that the identity of such affiliate owners are characteristics that the Commission relies upon in granting the seller market-based rate authority. However, we are also mindful of Order No. 816, in which the Commission amended section 35.42 to provide a 100 MW threshold for reporting new affiliations, and thus we propose that these two concepts be combined, as described below. In addition, we propose in the instant rulemaking to specify the following scenario as an additional departure from the characteristics the Commission relied upon in granting market-based rate authority and which should be reported to the Commission: when the seller acquires a new ultimate affiliate owner(s). Accordingly, we propose to require sellers to submit a notice of change in status in this scenario as well. In summary, combining all three of the above concepts, we propose that a change in status reporting requirement will be triggered by: (a) any change in the seller's ultimate affiliate owner(s); or (b) the introduction of any new affiliate owner of the seller that has a franchised service area or that: directly owns or controls generation (if it represents a 100 MW or more net increase in seller and affiliate generation); owns, operates or controls transmission; or that directly owns or controls: generation; transmission; intrastate natural gas transportation, storage or distribution facilities;

physical coal supply sources or ownership of or control over who may access transportation of coal supplies.<sup>24</sup> We remind sellers that the provisions in section 35.42(a)(1) apply to the seller and its affiliates because the Commission considers affiliates' assets when assessing a seller's horizontal and vertical market power.<sup>25</sup>

### **III. Information Collection Statement**

18. The Paperwork Reduction Act (PRA)<sup>26</sup> requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB's regulations,<sup>27</sup> in turn, require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date.

Respondents subject to the filing requirements of a rule will not be penalized for failing

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<sup>24</sup> We note that some of these requirements exist in the current regulation or the regulation as revised by Order No. 816.

<sup>25</sup> See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 1017 ("the Commission's change in status requirements are intended to track the requirements embedded in the horizontal and vertical analysis as well as the affiliate abuse representations."). See also *id.* P 3 n.2 (major aspects of the Commission's market-based rate regulatory regime include "whether a market-based rate seller or any of its affiliates has market power in generation or transmission and, if so, whether such market power has been mitigated" and "whether the seller or its affiliates can erect other barriers to entry.")

<sup>26</sup> 44 U.S.C. 3501-3520.

<sup>27</sup> 5 CFR 1320 (2015).



to respond to these collection(s) of information unless the collection(s) of information display a valid OMB control number.

19. The Commission is submitting the proposed modifications to its information collection to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.

20. The following table provides the estimated burden reduction proposed in RM16-3:<sup>28</sup>

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<sup>28</sup> In Order No. 697-A, the Commission required that sellers seeking to obtain or retain market-based rate authority identify all upstream owners and affiliates. Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 181 n.258. The Commission most recently updated the burden estimates associated with the market-based rate program in Order No. 816, which will become effective on January 28, 2016. The PRA package and burden estimates for the Order No. 816 are pending OMB review.

FERC-919, Estimated Changes, due to Proposed Rule in RM16-3					
Type of Requirement	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden Hours & Cost per Response <sup>29</sup> (4)	Annual Burden Hours & Total Annual Cost (3)*(4)=(5)
Reduction of requirement for sellers to describe entire ownership structure in Initial Applications and Triennial Updated Market Power Analyses, & Change of Status -- [Decrease in burden and cost]	509	1	509	-40 hrs.; -\$3,858	-20,360 hrs.; -\$1,963,722

Title: FERC-919, Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities.

Action: Proposed revision to existing collection.

OMB Control No: 1902-0234.

Respondents: Business or other for profit, and not for profit institutions.

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<sup>29</sup> The Commission estimates this figure based on the Bureau of Labor Statistics data (for the Utilities sector, at [http://www.bls.gov/oes/current/naics2\\_22.htm](http://www.bls.gov/oes/current/naics2_22.htm), plus benefits information at <http://www.bls.gov/news.release/ecec.nr0.htm>). The average hourly cost (salary plus benefits) of \$96.45 is based on the following occupational categories:

- Lawyer (Code 23-0000), \$129.87/hour
- Management Analyst (Code 13-1111), \$63.03/hour

Frequency of Responses: As needed.

Necessity of the Information: This NOPR reduces the amount and scope of ownership information that sellers must provide in their market-based rate filings.

Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, e-mail:

DataClearance@ferc.gov, phone: (202) 502-8663, fax: (202) 273-0873].

21. Comments concerning the information collection proposed in this NOPR and the associated burden estimates, should be sent to the Commission in this docket and may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by e-mail to OMB at the following e-mail address: oira\_submission@omb.eop.gov. Please refer to OMB Control Number 1902-0234 in your submission to OMB.

#### **IV. Environmental Analysis**

22. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.<sup>30</sup>

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<sup>30</sup> *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

23. The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of the regulations being amended.<sup>31</sup> The actions here fall within this categorical exclusion in the Commission's regulations.

**V. Regulatory Flexibility Act**

24. The Regulatory Flexibility Act of 1980 (RFA)<sup>32</sup> generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) revised its size standard (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees including affiliates.<sup>33</sup> This NOPR, if adopted, reduces (for small and large entities) the burden and expense associated with filing market-based rate applications and triennial market power updates by clarifying the current regulations and by requiring identification of only the ultimate affiliate owner(s) and affiliate owners that directly own or control generation, transmission, or inputs to electric power production, have a franchised service area, or have market-based rate authority, rather than the comprehensive ownership information

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<sup>31</sup> 18 CFR 380.4(a)(2)(ii) (2015).

<sup>32</sup> 5 U.S.C. 601-612 (2012).

<sup>33</sup> SBA Final Rule on "Small Business Size Standards: Utilities," 78 FR 77,343 (Dec. 23, 2013).

currently required. In addition, the Commission clarifies and limits the types of ownership changes that must be reported to the Commission via a notice of change in status. Accordingly, the Commission certifies that this NOPR, if adopted, will not have a significant economic impact on a substantial number of small entities. An analysis under the RFA is not required.

## **VI. Comment Procedures**

25. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due **[INSERT DATE 60 days after publication in the FEDERAL REGISTER]**. Comments must refer to Docket No. RM16-3-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

26. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

27. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

28. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## **VII. Document Availability**

29. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington DC 20426.

30. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

31. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

List of subjects in 18 CFR Part 35

Electric power rates; Electric utilities; Reporting and record-keeping requirements.

By direction of the Commission.

Issued: December 17, 2015.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, Code of Federal Regulations, to read as follows:

**Part 35 – FILING OF RATE SCHEDULES AND TARIFFS**

**1. The authority citation for Part 35 continues to read as follows:**

**Authority:** 16 U.S.C. 791a-825r; 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

**2. Amend § 35.37 by revising paragraph (a)(2) to read as follows:**

**§ 35.37 Market power analysis required.**

(a)(1) \* \* \*

(2) When submitting a market power analysis, whether as part of an initial application or an update, a Seller must include a description of its ownership structure that identifies all ultimate affiliate owner(s), i.e., the furthest upstream affiliate(s) in the ownership chain. A Seller must also identify all affiliate owners that have a franchised service area or market-based rate authority, and all affiliate owners that directly own or control: generation; transmission; intrastate natural gas transportation, storage or distribution facilities; physical coal supply sources or ownership of or control over who may access transportation of coal supplies. The term “affiliate owner” means any owner of the Seller that is an affiliate of the Seller as defined in § 35.36(a)(9) of this chapter. The Seller must also provide an appendix of assets in the form provided in Appendix B of this subpart and an organizational chart. The organizational chart must depict the Seller’s current corporate structure indicating all affiliates.

\* \* \* \* \*



**3. Amend § 35.42 by revising paragraph (a)(2)(iv) and adding paragraph (a)(2)(v) to read as follows:**

**§ 35.42 Change in status reporting requirement.**

(a) \* \* \*

(2) \* \* \*

(iv) Has a franchised service area; or

(v) Is an ultimate affiliate owner, defined as the furthest upstream affiliate(s) in the ownership chain.

\* \* \* \* \*

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